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10/774,352

02/06/2004

Gerd Scharminghausen

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EXAMINER

EWALD, MARIA VERONICA

ART UNIT

PAPER NUMBER

1722

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/774,352

Applicant(s)

SCHARNINGHAUSEN ET AL.

Examiner

Maria Veronica D. Ewald

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

13. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 19, 2007 and April 2, 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 8, 10, 12 – 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by King (U.S. 3,857,989). King teaches a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 27 – figure 1), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that is at least partially introducible through the slit into the

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forming space (items 28 and 29 – figure 1; column 3, lines 49 – 51), and each of the plurality of mass portions being output from the forming space through the output opening (item 27 – figure 1), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein the cutting device is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space (figure 1); wherein the forming space has a filling opening (item 26 – figure 1), through which the mass can be filled into the forming space.

With respect to claims 8, 10 and 12, King further teaches that the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 1); wherein the wall is substantially cylindrical (item 27 – figure 1) and the slit almost completely penetrates the wall (figure 1); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (column 3, lines 55 – 60).

With respect to claims 13 and 15, the reference also teaches a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 27 – figure 1), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that can be introduced through the slit at least partially into the forming space (items 28 and 29 – figure 1; column 3, lines 49 –

51), and each of the plurality of mass portions being output from the forming space through the output opening (item 27 – figure 1), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein there are means for transporting the mass, the means of transport being discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (column 3, lines 55 – 60).

Claims 1 – 5, 8 – 10, 12 – 13 and 15 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Stall, et al. (U.S. 5,003,666). Stall, et al. teach a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 34 – figure 3), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (item 42 – figure 3); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that is at least partially introducible through the slit into the forming space (item 70 – figure 1; column 6, lines 10 – 15), and each of the plurality of mass portions being output from the forming space through the output opening (figures 8 – 10), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein the cutting device is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space (figure 1); wherein the forming space has a filling opening (item 12 –

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figure 1), through which the mass can be filled into the forming space; wherein the forming space has a geometry matched to the form of an end product (figure 1); wherein the forming space is defined inside a tube through which the mass is axially transportable (items 12 and 14 – figure 1).

With respect to claims 8 – 10, the reference further teaches that the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 1); wherein the slit is spaced at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (figures 8 – 10); wherein the wall is substantially cylindrical (item 27 – figure 1) and the slit almost completely penetrates the wall (figure 1); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (column 6, lines 1 – 30).

With respect to claims 13 and 15 – 17, Stall, et al. also teach a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 34 – figure 3), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (item 42 – figure 3); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that can be introduced through the slit at least partially into the forming space (item 70 – figure 1; column 6, lines 10 – 15), and each of the plurality of mass portions being output from the forming

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space through the output opening (figures 8 – 10), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein there are means for transporting the mass, the means of transport being discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (figure 1; column 6, lines 1 – 30); wherein the geometry has a cross-section that is substantially rotationally symmetrical (figure 1); wherein the geometry has a cross-section that is oval (figures 1 and 8 – 10).

Claims 1 – 3, 8, 10, 12 – 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi (U.S. 5,004,619). Kobayashi teaches a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 23 – figure 3), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (figure 3); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that is at least partially introducible through the slit into the forming space (item 3 – figure 3; column 3, lines 50 – 55), and each of the plurality of mass portions being output from the forming space through the output opening (item 21 – figure 3), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 3); wherein the cutting device is introducible into the forming space in a direction that lies approximately

perpendicular to the direction in which the mass is filled into the forming space (figure 3); wherein the forming space has a filling opening (item 14 – figure 3), through which the mass can be filled into the forming space (figure 3).

With respect to claims 8, 10 and 12, Kobayashi further teaches that the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (figure 3); wherein the wall is substantially cylindrical (figure 3) and the slit almost completely penetrates the wall (figure 3); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (column 3, lines 50 – 60).

With respect to claims 13 and 15, the reference also teaches a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 23 – figure 3), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (figure 3); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that can be introduced through the slit at least partially into the forming space (item 3 – figure 3; column 3, lines 50 – 55), and each of the plurality of mass portions being output from the forming space through the output opening (item 21 – figure 1), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 3); wherein there are means for transporting the mass, the means of transport being discontinuously operable, and the timing of the discontinuous operation

cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (column 4, lines 1 – 40; column 5, lines 1 – 30).

Claims 1 – 4 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Abler (U.S. 5,230,267). Abler teaches a portioning device for portioning a bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 20 – figure 1), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (wall holding item 28 – figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that is at least partially introducible through the slit into the forming space (item 26 – figure 1), and each of the plurality of mass portions being output from the forming space through the output opening (bottom of item 20 – figure 1), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein the cutting device is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space (figure 1); wherein the forming space has a filling opening (item 24 – figure 1), through which the mass can be filled into the forming space (figure 1); wherein the forming space has a geometry matched to the form of an end product (figure 1); wherein there are means for fastening the cutting device as an attachment to a device for transporting and/or mincing bulk material (item 28 – figure 1).

With respect to claims 13 – 17, the reference also teaches a device for transporting and/or mincing bulk material, comprising: a forming space adapted to be filled by a mass of bulk material (item 20 – figure 1), the forming space bounded by a wall for forming the mass, the wall including a slit and an output opening (wall holding item 28 – figure 1); and a cutting device for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter that can be introduced through the slit at least partially into the forming space (item 26 – figure 1), and each of the plurality of mass portions being output from the forming space through the output opening (bottom of item 20 – figure 1), wherein the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space (figure 1); wherein there is a smoothing belt that can receive the plurality of mass portions, the smoothing belt cooperating with at least one shaping surface to aftershape each of the plurality of mass portions (items 15 and 16 – figure 1) wherein there are means for transporting the mass, the means of transport being discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (column 4, lines 60 – 70; column 5, lines 1 – 5); wherein the geometry has a cross section that is substantially rotationally symmetrical (figure 1); wherein the geometry has a cross section that is oval (figure 1).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over King in view of Bortone, et al. (U.S. 6,797,213). King teaches the characteristics previously described but does not teach that the cutter is a rotating two-bladed knife.

In a method to sever extruded puff pastry pieces, Bortone, et al. teach the use of a rotating two-bladed cutting device mounted on shaft (item 72 – figures 10a and 10b). The rotating pair of paddles nicks the extruded pastry dough to form a plurality of curly pieces. Thus, using a two-bladed paddle cuts more dough in less time, thereby increasing production.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the rotating blade of King such that a pair of rotating paddles are used for the purpose of cutting multiple pieces of food in less time, thereby increasing production.

***References of Interest***

16. Krysiak (U.S. 4,251,201) and Burtscher (U.S. 5,643,617) are cited of interest to show the state of the art.

***Response to Arguments***

17. Applicant's arguments, see pages 5 – 7, filed March 19, 2007, with respect to the rejection(s) of claim(s) 1 – 17 under 102(b) and with respect to the references of Kato, Covington, Morikawa, and Gilson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of King, Abler, Stall, et al. and Kobayashi, wherein each teaches a slit or narrow opening in a wall, such that the slit extends far enough allowing the cutting device to cut through the cross section of the forming space.

***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Veronica D. Ewald whose telephone number is 571-272-8519. The examiner can normally be reached on M-F, 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MVE

  
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PRIMARY EXAMINER  
GROUP 1300/1700

6/11/07